

**REMARKS/ARGUMENTS**

Claims 1-9, 11-24, and 26-28 are pending.

Claims 2-9, 18-20, 23, 24, and 26-28 have been withdrawn.

Claims 10, 14, 16, and 25 have been cancelled.

Claims 1-9, 11-13, 15, 17-24, and 26-28 are pending. Claims 2-9, 18-20, 23, 24, and 26-28 have been withdrawn.

**Claim Objections**

Claim 1 has been amended to consistently recite "a clamping member", rendering the Examiner's objection moot. Additionally, Claims 14 and 16 have been canceled, rendering the Examiner's objection to Claims 14 and 16 moot.

**Claim Rejections – 35 U.S.C. § 103(a)**

Claims 1, 11-13, 15, 17, 21, and 22 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2005/0069397 to Shavit et al ("Shavit '397") in view of U.S. Patent No. 6,702,816 to Buhler ("Buhler '816").

Shavit '397 discloses nail 12, shown in Fig. 2, having holes 14, 16 extending therethrough and locking mechanism 22 configured to lock in place hip peg 10, shown in Fig. 1B, which is sized for receipt within hole 16. Referring to Fig. 4, locking mechanism 22 locks hip peg 10, which would be positioned through hole 16, in position while avoiding interfering with hip pin 25, shown in Fig. 5A, positioned through hole 14. As shown in Figs. 3A, 3B, hole 32 formed in locking mechanism 22 is sized to allow locking mechanism 22 to extend around hip pin 25 without touching it. As an alternatively, shown in Fig. 5A, hole 31 may be formed in hip pin 25 to allow hip pin 25 to go around locking mechanism 22 without interfering with locking mechanism 22. Thus, when securing mechanism 22 is actuated to lock hip peg 10 in position, tab 20 of locking mechanism 22 contacts hip peg 10 and secures it between the wall defining hole 16 and tab 10. At the same time, hip pin 25 is not locked in position due to the size of hole 32 in locking mechanism 22.

Applicant respectfully submits that amended independent Claim 1 is not obvious over Shavit '397 in view of Buhler '816, as neither Shavit '397 nor Buhler '816, either alone or in combination, disclose or suggest a bone fixing system including, *inter alia*, a nail having a longitudinal axis, a longitudinal bore defining an inner wall of the nail, and three transverse bores each defining a longitudinal axis, and three screws, which can be guided through the

transverse bores formed in the nail, and a clamping member which can be introduced into the longitudinal bore of the nail and is axially adjustable in the longitudinal bore relative to the nail, the clamping member having three passages extending therethrough and corresponding to the three transverse bores of the nail, with all screws guided through the transverse bores of the nail and the passages of the clamping member being clamped between the clamping member and the inner wall of the nail bounding the transverse bore by a displacement of the clamping member.

In contrast to amended independent Claim 1, Shavit '397 discloses a locking mechanism for use with an intramedullary nail that includes bore 32 that is specifically sized to prevent the locking in position of a hip pin, such as hip pin 25 of Fig. 5A. The Examiner's additional citation of Buhler '816 fails to overcome the deficiency of Shavit '397, as neither Buhler '816 nor Shavit '397, either alone or in combination, disclose or suggest a bone fixing system meeting each and every limitation of amended independent Claim 1.

Thus, for at least the foregoing reasons, Applicant respectfully submit that amended independent Claim 1, as well as Claims 11-13, 15, 17, 21, and 22, which depend therefrom, are not obvious over Shavit '397 in view of Buhler '816.

Claims 1, 11-13, 15, 17, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,074,882 to Grammont et al ("Grammont '882") in view of Buhler '816.

Grammont '882 discloses, as shown in Fig. 2, nail C having screws 8, 9 positioned through opposing ends thereof. Nail C is configured such that portions 1 and 2 will expand relative to one another by utilizing a ratcheting mechanism, generally shown at 3. As a part of the ratcheting mechanism, rod 5, shown in Figs. 1 and 3, includes a semi-circular cut-out that cooperates with a corresponding cut-out in rod 4 to prevent rotation of rod 4 during actuation of the ratcheting mechanism.

Applicants respectfully submit that amended independent Claim 1 is not obvious over Grammont '882 in view of Buhler '816, as neither Grammont '882 nor Buhler '816, either alone or in combination, disclose a bone fixing system including, *inter alia*, a nail having a longitudinal axis and three transverse bores each defining a longitudinal axis, and three screws, which can be guided through the transverse bores formed in the nail, the bone fixing system further including a clamping member which can be introduced into the longitudinal

bore and is axially adjustable and is axially adjustable in the longitudinal bore relative to the nail, the clamping member having three passages extending therethrough and corresponding to the three transverse bores of the nail, with all screws guided through the transverse bores of the nail and the passages of the clamping member being clamped between the clamping member and the inner wall of the nail bounding the transverse bore by a displacement of the clamping member.

In forming the rejection, the Examiner relies on the rod 5 of Grammont '882 as defining the clamping member called for in amended independent Claim 1. However, amended independent Claim 1 calls for all screws guided through the transverse bores of the nail and the passages of the clamping member being clamped between the clamping member and the inner wall of the nail bounding the transverse bore *by a displacement of the clamping member*. In contrast, nowhere does Grammont '882 disclose or suggest that the displacement of rod 5 clamps a screw between rod 5 and nail C. In fact, the only function of rod 5 disclosed in Grammont '882 is to prevent rotation of rod 4, which is achieved by the insertion of screw 9 through rod 5. Thus, Grammont '882 fails to disclose or suggest screws being clamped between the clamping member and the inner wall of the nail bounding the transverse bore *by a displacement of the clamping member*.

The Examiner's additional citation of Buhler '816 fails to overcome the deficiency of Shavit '397, as neither Buhler '816 nor Shavit '397, either alone or in combination, disclose or suggest a bone fixing system meeting each and every limitation of amended independent Claim 1.

Thus, for at least the foregoing reasons, Applicant respectfully submits that amended independent Claim 1, as well as Claims 1, 11-13, 15, 17, 21, and 22, which depend therefrom, are not obvious over Grammont '882 in view of Buhler '816.

### **Conclusion**

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicant respectfully submits that the application is in condition for allowance and respectfully requests allowance thereof.

Application Serial No. 10/667,248  
Amendment dated September 12, 2008  
Reply to Office Action dated April 17, 2008

In the event Applicant has overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby petitions therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, she is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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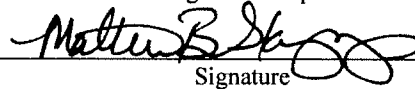
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Signature

September 12, 2008

Date